

Memorandum

To: Planning and Zoning Commission

From: Martin Zimmermann, AICP, Planning Manager

Date: December 4, 2014

Re: proposed amendments to the Zoning Ordinance concerning Conditional Use Permit and amendments to the Zoning Ordinance, districts and administrative procedures process and notification changes

BACKGROUND:

During its regular meeting on August 12, 2014, the Bryan City Council considered the following changes to Chapter 130 of the Bryan Code of Ordinances:

1. Change Section 130-33, Conditional use permits to add an appeal process to the city council that requires a 3/4 vote of the 7 council members. The notification shall require a mailed, using the US Postal Service, written notice at least 8.5 by 11 inches in size, folded in a standard envelope, to property owners within 500 feet of the subject property before any action relative to a conditional use permit and 30 days or more prior to the scheduled Bryan government or committee hearing.

2. Change Section 130-42, Changes and amendments to zoning ordinance, districts and administrative procedures to add an appeal process to the city council that requires a 3/4 vote of the 7 council members. The notification shall require a mailed, using the US Postal Service, written notice at least 8.5 by 11 inches in size, folded in a standard envelope, to property owners within 500 feet of the subject property before any action relative to a conditional use permit and 30 days or more prior to the scheduled Bryan government or committee hearing.

After discussion, the City Council voted to refer these proposed changes to the Planning and Zoning Commission for a recommendation.

During its workshop meeting on September 18, 2014, the Planning and Zoning Commission appointed a subcommittee comprised of three Commissioners (Krolczyk, Gutierrez, Hardeman) to further study the proposed ordinance changes. During the Planning and Zoning Commission's workshop meeting on November 20, 2014, the subcommittee presented an overview of its discussion on the matters to the full Commission. The text amendments have been scheduled for consideration by the Planning and Zoning Commission during its regular meeting on December 4, 2014.

OPTIONS:

The Planning and Zoning Commission may recommend that the City Council

1. approve one or both of the proposed text amendments;
2. approve one or both of the proposed text amendments with modifications; or
3. reject both proposed text amendments.

OVERVIEW OF PLANNING AND ZONING COMMISSION SUBCOMMITTEE DISCUSSION:

In General

1. Citizen awareness and participation in the development process is desirable and should be encouraged.
2. The proposed changes, if approved, would add time and cost to the development process that may discourage potential investors from developing in Bryan.
3. The proposed changes seem regressive, not progressive, and could slow down development in Bryan by adding at least 4-6 weeks to get approval for a development proposal.

Conditional Use Permits (130-33)

1. There already is a proven democratic process for CUP appeals in Section 130-33(f); applicants can appeal denials or conditions and owners within 200 feet can appeal approvals.
2. The proposed change to Section 130-33 does not address who has standing to appeal. If any citizen has standing to appeal a CUP, then it is likely that many (if not all) CUP requests would have to be considered by the City Council.

Zoning Ordinance amendments/rezonings (130-42)

1. All changes and amendments to the zoning ordinance already require Council consideration as described in Section 130-42(i). Section 130-42 also provides for protests for zoning changes. Section 130-42 does not speak to Conditional Use Permits as referred to in the agenda item description.
2. The proposed change to Section 130-42 is unclear on what sort of appeals process is proposed. Items recommended for approval by the P&Z are automatically forwarded; items recommended to be denied will only be forwarded to Council if the applicant so requests. It is unclear who would have standing to appeal.
3. 200-foot notification areas and requiring a supermajority vote for protested rezonings are requirements that come from State law (Texas Local Government Code Chapter 211).

Both proposals

1. Requiring supermajority approval for every CUP appeal/change to the zoning ordinance would:
 - a. put applicants at a disadvantage and erode majority rule.
 - b. slow down development in Bryan.
 - c. require 6 of 7 the Councilmembers to agree on an item (not just those present and voting).
2. 23 regular Council meeting were held between 11/12/13 and 10/28/14 (see attachment); during more than half (12) of those meetings, less than the full Council was present; during 5 of those 12 meetings, only 5 Council members were present, which means that an appeal requiring a supermajority vote could not have been considered at those meetings and thereby further delaying a final decision on a development proposal.
3. Increasing the notification area to 500 feet will increase the cost for mailings for each item.
4. The current system of postcard notifications, where property owner information is uploaded and postcards created electronically appears to be a less time-consuming use of staff time. Requiring letter notifications will increase the staff time (and cost) spent on preparing envelope labels, printing notifications and maps, and stuffing envelopes, as well as supply cost.
5. There is no evidence that letters would reach a wider audience and encourage more citizen participation and awareness of a proposal than a postcard would.

Conclusion

The subcommittee's consensus is that the proposals should be rejected.